



State of New Jersey

ELECTION LAW ENFORCEMENT COMMISSION

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Acting Legal Director

JAMES P. WYSE
Counsel

February 24, 2003

Rebecca G. Cox, Treasurer
Continental Airlines, Inc. Employee Fund for a Better America
1350 I Street, NW
Washington, DC 20005

Advisory Opinion No. 02-2003

Dear Ms. Cox:

Your request for an advisory opinion on behalf of the Continental Airlines, Inc. Employee Fund for a Better America (hereafter, CEFBA) was considered by the Commission at its meeting of February 24, 2003, and the Commission directed me to issue the following response pursuant to N.J.S.A. 19:44A-6f. You have asked whether or not CEFBA is an “association or group,” as those terms are used in the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. (hereafter the Campaign Reporting Act), subject to the contribution limits applicable to an “association or group,” or is a “political committee” (hereafter, PC) or “continuing political committee” (hereafter, CPC) subject to the reporting and other requirements of the Campaign Reporting Act?

Commission Opinion

Under the facts you have submitted, the Commission concludes that CEFBA is an “association or group” subject to the contribution limits for an “association or group”; see N.J.S.A. 19:44A-11.3, 11.4, and 11.5 (as adjusted pursuant to N.J.S.A. 19:44A-7.2) and N.J.A.C. 19:25-11.2. The Commission finds that CEFBA does not meet the Campaign Reporting Act’s definitions of a PC or CPC, and therefore does not acquire a reporting obligation as either a PC or CPC.

Discussion

The Commission considered three factors in determining that CEFBA is an “association or group” and not a PC or CPC.

Major Purpose of CEFBA

The first factor requires an examination of CEFBA’s financial activity to determine whether or not it is a “major purpose” of CEFBA to aid or promote New Jersey candidates or committees. You indicated

in your inquiry that the CEFBA is a “federal political action committee organized for the purposes of promoting the business of Continental Airlines, Inc.” Contributions to CEFBA come exclusively from Continental Airlines, Inc. employees, and CEFBA makes contributions to “federal and state candidates throughout the country.” Most contributions to CEFBA are made by Texas residents because the corporation’s headquarters are in Houston. You stated that only 5 of the 174 Continental employees contributing to CEFBA (or about 2% of the contributors) are New Jersey residents. Further, less than two percent of the total funds received by CEFBA last year from Continental employees came from New Jersey residents, and CEFBA contributions to New Jersey candidates represented less than one percent of the total amount of its contributions to all candidates in 2002.

Based upon the financial information you have supplied concerning calendar year 2002, the Commission finds that CEFBA’s New Jersey activity represents a minimal portion of its total receipts and total contribution activity. The Commission concludes that it does not appear to be a “major purpose” of CEFBA to aid or promote candidates or committees in New Jersey, and that CEFBA is therefore not a PC or CPC. If it were a “major purpose” of CEFBA to support New Jersey candidates or committees, CEFBA would by definition be either a PC or CPC because the definitions of PC and CPC provide that they be organized to aid or promote candidates for New Jersey elective public office or the passage or defeat of a public question; see N.J.S.A. 19:44A-3i and 19:44A-3n and N.J.A.C. 19:25-1.7.

In Advisory Opinion 06-2001, the Commission determined that the Democratic Governors’ Association (DGA) was an “association or group” and not a PC or CPC under the Campaign Reporting Act because its New Jersey election activity was “episodic and only a portion of its overall activities,” and its “major purpose” did not appear to be aiding or promoting New Jersey candidates or committees. The Commission believes that its opinion with regard to CEFBA is consistent with the reasoning in Advisory Opinion 06-2001.

Solicitation of Contributions by CEFBA

The second factor requires a determination that CEFBA does not solicit contributions specifically to make contributions to New Jersey candidates or committees. If, as the Commission noted in Advisory Opinion 06-2001, CEFBA “were to solicit contributions with the stated or principal purpose of making contributions to New Jersey candidates or committees,” CEFBA’s “major purpose” could be construed to be aiding or promoting New Jersey candidates or committees. In that situation, CEFBA would become subject to the Campaign Reporting Act’s requirements as a PC or CPC. You have stated that CEFBA “[e]mployees contribute without knowing what candidates will be supported or what issues will be endorsed by CEFBA,” and that solicitations to CEFBA employees contain no reference to New Jersey candidates or committees. The Commission therefore concludes that CEFBA’s method of soliciting contributions provides no evidence that its “major purpose” is to aid or promote New Jersey candidates and committees.

CEFBA Reports Filed with the FEC

The third factor considered by the Commission is whether or not CEFBA files reports with the Federal Election Commission (hereafter, FEC). You stated in your inquiry that CEFBA is registered with the FEC and files monthly disclosure reports as required by the FEC. Because information concerning CEFBA contribution and expenditures is available for public review and inspection from the FEC, treating CEFBA as an “association or group” does not result in an absence of public disclosure of CEFBA financial activity. As it similarly concluded in Advisory Opinion 06-2001, the Commission notes that if CEFBA were required to file with the Commission as a PC or CPC, its reports would be

comprised largely of contribution and expenditure transactions that are not relevant to New Jersey election activity.

Thank you for submitting this request and for your interest in the work of the Commission.

Very truly yours,

ELECTION LAW ENFORCEMENT
COMMISSION

By: _____
NEDDA G. MASSAR
Acting Legal Director

FEB - 6 2003



ADVISORY OPINION REQUEST

A person, committee or entity subject to, or reasonably believing he, she or it may be subject to, any provision or requirement of the Campaign Reporting Act may request that the Commission provide an advisory opinion pursuant to N.J.S.A. 19:44A-6. Such request must be in writing (please type or print) and must include the following:

1. This request for an Advisory Opinion is being submitted on behalf of:

Full Name of Person, Committee or Entity

Continental Airlines, Inc. Employee Fund for a Better America

Mailing Address

1600 Smith Street

Day Telephone No.

(202) 289-6060

Houston, TX 77002 Attn: Heather Heiter

Evening Telephone No.

N/A

2. Indicate if the above named person, committee or entity currently files reports with the Commission:

Yes

No

a. If yes, indicate in what capacity it is filing:

Candidate committee

Joint candidates committee

Political committee

Continuing political committee

Political party committee

Legislative leadership committee

Recall committee

Recall defense committee

Lobbyist

Legislative agent

Personal financial disclosure statement

Other (please describe):

b. If no, indicate if the above named person, committee or entity has in the past filed reports with the Commission, giving elections (i.e., 1992 general election) or calendar years, and identify filing capacity:

c. If reports are or were filed under a different name than that appearing in 1 above, provide that name:

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission regulations (if known).

See Attached

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

See Attached

6. Person who is submitting request on behalf of committee or entity listed in Item 1 above:

Full Name: Rebecca G. Cox

Mailing Address:
1350 I Street, NW

Day Telephone No.
(202) 289-6060

Suite 1250

Evening Telephone No.
N/A

Washington, DC 20005

Fax Number:
(202) 289-1546

a. Official Capacity of Person Requesting Opinion:

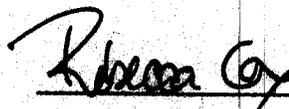
- Candidate
- Treasurer
- Organizational Treasurer
- New Jersey Attorney representing requesting person, committee or entity
- Other (please describe): _____

7. I hereby consent to an extension of the 10-day response period provided in N.J.S.A. 19:44A-6f to a 30-day period for Commission response, which period shall start on the date of Commission receipt of the completed advisory opinion request. (CROSS OUT THIS PARAGRAPH IF CONSENT IS WITHHELD).

8. A request for an advisory opinion will not be considered filed until a fully completed and signed application is received by the Commission.

January 28, 2003

Dated:



Rebecca G. Cox

Signature

3. Please provide below a statement of the cognizable question of law arising under the Campaign Reporting Act, including specific citations to pertinent sections of the Campaign Reporting Act and Commission Regulations.

Should Continental Airlines Employee Fund for a Better America be treated as a New Jersey continuing political committee or as a "group or association" by virtue of the fact that it is an "organization or entity that is filing campaign finance reports with the Federal Election Commission?"

N.J.S.A. 19:44A-3(n) and (i); N.J.A.C. 19:25-11.11(a).

4. Please provide below a full and complete statement of all pertinent facts and contemplated activities that are the subject of the inquiry.

Continental Airlines Employee Fund for a Better America (CEFBA) is a federal political action committee organized for the purposes of promoting the business of Continental Airlines, Inc. CEFBA accepts contributions exclusively from the employees of Continental Airlines, Inc., and contributes to federal and state candidates throughout the country. CEFBA is registered with the Federal Election Commission (FEC), with whom it files monthly detailed disclosure reports of all receipts and expenditures, as required by the FEC.

CEFBA is primarily organized to support federal candidates. In the past, CEFBA has also supported state candidates in jurisdictions where corporate contributions are prohibited. Until recently, CEFBA only rarely made contributions to state candidates in New Jersey. In these recent, challenging times for the airline industry, where corporate funds for political contributions are not available, we have used CEFBA on a very limited basis to support New Jersey state candidates.

CEFBA only solicits contributions from the employees of Continental Airlines, Inc. Employees contribute without knowing what candidates will be supported or what issues will be endorsed by CEFBA. Because Continental's corporate headquarters are located in Houston, Texas, the vast majority of contributions to CEFBA are from Texas residents. Out of the 174 Continental employees that contribute to CEFBA, only 5 individuals (or about 2% of the contributors) are New Jersey residents. Of the \$229,152.02 received by CEFBA last calendar year, only \$4,500.00 (less than 2%) came from New Jersey residents.

Similarly, because CEFBA supports candidates throughout the country, only a small portion of receipts is disbursed to New Jersey state candidates. Last year, CEFBA contributed to 156 candidates throughout the country - only 5 were New Jersey state candidates. To those five candidates, CEFBA disbursed a total of \$1,650.00 (with no single

candidate receiving more than \$600), as compared to the \$192,279.00 that CEFBA expended on other candidates throughout the country.

5. Please provide below a statement of the result that the person, committee, or entity seeks, and a statement of the reasoning supporting that result.

CEFBA seeks a determination that, as federal political action committee registered with the FEC, it is a group or association that is not required to register with the state as a continuing political committee or file periodic campaign finance reports with the Election Law Enforcement Commission.

CEFBA's offices are located in Houston, Texas (it does not have any offices or staff in New Jersey), and it makes contributions to candidates and political party committees throughout the country each election year. CEFBA is registered with the FEC and files monthly detailed reports itemizing receipts and expenditures. The FEC reports filed by CEFBA are public records available for review by any interested party through various sources, including over the Internet (at www.fec.gov).

The Commission's regulations provide that an organization or entity that files campaign finance reports with the FEC shall be treated as an association or group for New Jersey contribution limits and it would not be required to file New Jersey campaign finance reports. N.J.A.C. 19:25-11.11(a).

For the foregoing reasons, CEFBA should be treated as an association or group for contribution and reporting purposes.